



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

February 13, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: EX PARTE NOTICE Via ECFS

GN Docket No. 14-28: In the Matter of Protecting & Promoting the Open Internet
GN Docket 10-127: In the Matter of a Framework for Broadband Internet Service

Dear Ms. Dortch:

Yesterday, Phillip Berenbroick, Policy Director at the Internet Freedom Business Alliance (IFBA) and the undersigned met with Gigi Sohn, Daniel Alvarez and Eric Feigenbaum of Chairman Wheeler's office to discuss the problem of network interconnection abuses and disputes that may cause degradation of the broadband Internet access service that consumers and small businesses receive from their local network provider.

We began by applauding the draft Open Internet Order's action to classify broadband Internet access as a telecommunications service, and noted that by definition, telecom services involve two-way transmission, including local delivery of traffic that an Internet Access Provider's (IAP's) own customers have requested from the Internet. We also noted our support for recognizing local or regional network interconnection points as a place where Internet access service is vulnerable to interference from IAPs. Specifically, if an IAP allows its interconnection points (IXPs) to congest and demands terminating access tolls from edge providers or transit providers, the IAPs own customers may experience a degraded quality of service that is inferior to the open Internet access they have purchased.

We also explained that small businesses and startups are negatively affected when IAPs allow congestion to build up at interconnection points in order to extract access tolls from transit networks and edge providers. As Tumblr discussed in its Comments, its viability would have been threatened at an early stage in its development if the company had been forced to pay additional fees due to the imposition of access tolls at IXPs by IAPs.¹ Vimeo has pointed out that access tolls that IAPs charge to CDNs are passed on to the CDN's customers, "mak[ing] interconnection fees directly relevant to our business and our bottom line." As companies like Vimeo grow and develop and

¹ See Comments of Tumblr, Inc., GN Docket No. 14-28, at 6, 8 (filed Sept. 9, 2014) (being required to pay access tolls for interconnection would have seriously disrupted Tumblr's business model, "forcing it to

deploy their own CDNs, IAP access tolls will be directly, rather than indirectly, assessed on their services.²

We stated that our first preference would be to prohibit access tolls entirely where the IAP is charging third parties for merely “opening the door” to its local delivery network. However, we could also support the adjudication approach described in the Chairman’s Fact Sheet, if it adequately prohibits conduct that circumvents or undermines the effectiveness or goals of the open Internet rules. We suggested placing the burden of proof on the IAP to demonstrate that interconnection fees and/or practices that are the subject of a complaint are in fact just and reasonable and nondiscriminatory. We also suggested that the Commission consider a “standstill” provision that would preserve the quality of end user Internet access connections during the pendency of an FCC interconnection complaint. See Appendix A.

IFBA shared a compendium of financial analyst and IAP statements illustrating that reclassification will not cause reductions in investment in or development and deployment of next generation broadband networks. See Appendix B.

Respectfully submitted,

A handwritten signature in black ink, reading "Catherine R. Sloan". The signature is fluid and cursive, with a long horizontal flourish at the end.

Catherine R. Sloan
VP, Government Relations
Computer & Communications Industry Association (CCIA)

cc:

Gigi Sohn
Daniel Alvarez
Eric Feigenbaum

² Letter from Michael Cheah, General Counsel, Vimeo, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28, at 2 (filed Oct. 24, 2014).

APPENDIX A

Interconnection

- The Order should recognize that broadband Internet access service providers (IAPs) should not be permitted to evade the Open Internet rules at the local or regional interconnection point (IXP) through which inbound Internet traffic must flow to reach the last mile.
 - Consistent with the FCC's determination that IAP last mile access tolls (*i.e.*, charging edge providers a fee solely for accepting or delivering traffic to and from end user customers) are impermissible (see para 67, 2010 Open Internet Order), the 2015 Order should make clear that such charges are no less problematic if levied at the point of interconnection (IXP) to the last mile.
- In the event of a complaint filed under section 208, broadband Internet access providers should bear the burden of demonstrating that any interconnection fee imposed is just and reasonable and non-discriminatory.
 - Such interconnection fee, if any, may be imposed only where the broadband IAP provides some service other than what's necessary for accepting traffic at the point(s) of interconnection and delivering that traffic from such point(s) to the IAP's own subscribers.

Further to prevent disruption to end users:

- To protect consumers and small businesses during interconnection disputes, broadband IAPs must maintain the original quality of service to their own end user BIAS customers during any dispute so that those customers still get the service for which they have paid during the pendency of the dispute.

- *Appendix B*

Reclassification Proposals Have Not Affected Investment

It is simply untrue that reclassification has or will hurt network investment. Investment analysts agree.

JP Morgan Analyst Report, November 2014:

“While we recognize the long-term threat of additional regulation, we keep in mind that current business practices would be very little changed, and identify Monday’s sell-off [after President Obama’s statement supporting Title II reclassification] as a buying opportunity.”

- When the FCC proposed net neutrality rules in May 2010, ISP stocks sold off less than the overall market during the same period. Shares rebounded to prior levels by July as investors became comfortable with the new regime and realized little had changed. The stocks barely reacted when the final rules were adopted in December 2010.
- President Obama and FCC Chairman Wheeler both support the forbearance of rate regulation under a Title II/common carrier regime.
- Carriers likely to talk up the disaster scenario to keep pressure on FCC. Again, we believe that actual implementation will have little to no effect on current business practices.
- Proposed mergers currently under FCC review would likely have to agree to abide by the new rules as a condition for their merger.

- We expect ISPs to sue the FCC regardless of the final form of the rules.
 - We wouldn't change any of the fundamental assumptions on cable companies under our coverage under Title II, and shares are likely to rebound over time.¹ Guggenheim Securities Analyst Report, December 2014: We would not view a Title II decision by the FCC as changing the existing Washington framework for cable broadband service. The marketplace reality under Title II would be far less problematic for cable/telcos than most believe.² Bernstein Research Analyst Report, November 2014: During the three years in which the 2010 rules were in place while Verizon pursued its (unnecessary) litigation there did not appear to be any effect on investment decisions from the
- 1 Philip Cusick et al., "Net Neutrality: Prepared for Title II but We Take Less Negative View," J.P. Morgan, Nov. 11, 2014. 2 Paul Gallant, "Title 2 Appears Likely Outcome at FCC, but Headline Risk May Exceed Real Risk," Guggenheim Securities, LLC, Dec. 8, 2014.

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resulting litigation uncertainty. Further, the evidence carriers produce to support their argument that Title II classification will reduce investment tends to consist of commentary from analysts

and network-equipment suppliers, as well the results of their own discretionary choices.³

Bidding in the FCC's AWS-3 spectrum auction showed that the specter of Title II reclassification hasn't affected investment in wireless networks.

- € Bidding in the FCC's AWS-3 spectrum auction began days after President Obama called for wireless and fixed broadband networks to be regulated under the FCC's Title II authority.
- € The FCC's minimum target price for the auction was \$10.1 billion. Bids surpassed the minimum target price in less than a week.⁴
- € Final winning bids totalled \$44.9 billion, quadrupling the reserve price and raising record revenue.⁵
- € Predictions that possible Title II reclassification would undermine auction revenue were proven unfounded. AT&T and Verizon, along with 68 other bidders, participated, with AT&T and Verizon paying \$18.2 billion and \$10.4 billion in winning bids, respectively.⁶ ISPs have explicitly stated on that Title II reclassification won't affect investment Verizon Q: Wells Fargo Analyst: Obviously, kind of a curve ball on Monday with President Obama's commentary about Title II. Can you talk to how this will or will it affect your investment in broadband? A: Verizon CFO: No. I think that -- I mean, our policy on broadband is on our website. But to put it real simply, I mean, Verizon has always operated under open Internet policy and we will continue to operate that way.⁷

³ Paul de Sa et al., Bernstein Research, Nov. 17, 2014. ⁴ "U.S. Auction of AWS-3 airwaves reaches \$10 billion reserve price," Reuters, Nov. 18, 2014. ⁵ Alina Selyukh & Malathi Nayak, "AT&T top buyer at U.S. airwaves auction; Dish spends big," Reuters, Jan. 30, 2015. ⁶ id. ⁷ Verizon Communications, Inc., Wells Fargo Technology, Media & Telecom Conference, Nov. 12, 2014.

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Q: UBS Analyst: Obviously there's a lot of commentary coming out of Washington about this move to Title II. Obviously Verizon has been one of the . . . stiffer opponents of any sort of

increased regulation, especially on the wireless side. What's your view of that potential occurrence down in Washington and does it affect your view on the attractiveness of investing further in the United States?

A: Verizon CFO: I mean to be real clear, I mean this does not influence the way we invest. I mean we're going to continue to invest in our networks and our platforms, both in Wireless and Wireline FiOS and where we need to. So nothing will influence that. I mean if you think about it, look, I mean we were born out of a highly regulated company, so we know how this operates.⁸

Comcast

Q: UBS Analyst: The FCC has released a Title II. First of all, does that potential initiative in Washington change your view of the sort of long-term ROI potential of these or even your existing cable assets?

A: Comcast Vice Chairman & CFO: I don't think so yet.

Q: UBS Analyst: Do you think it would change how you run the business or your ability to lessen your price flexibility, are there any

sort of day-to-day issues that you think would change as a result of it?

A: Comcast Vice Chairman & CFO: I certainly hope not.⁹ Time Warner Cable

Q: UBS Analyst: Maybe turning to broadband, how do you think of the pricing power you have on the broadband side? You and the rest of the cable industry have been – continue to increase speeds and with all the video being watched it obviously creates more value. But on the other side of the point, you’ve got potential Title II which I think with all the forbearance

8 Verizon Communications, Inc., UBS 42nd Annual Global Media and Communications Conference, Dec. 9, 2014. 9 Comcast Corporation, UBS 42nd Annual Global Media and Communications Conference, Dec. 8, 2014.



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we’re talking about won’t put a cap on anything anytime soon. But does that change your view on how much pricing power you have in that business?

A: Time Warner Cable Chairman & CEO: It really doesn’t. . . . No one, Title II proponents and opponents alike, have suggested that whatever the FCC does it should include any component of rate regulation.¹⁰

Charter CommunicationsQ: UBS Analyst: Obviously, Title II has gotten a lot of attention. What's your view on the President's proposal?

A: Charter Communications President & CEO: Well, I was surprised by it. . . . So I was surprised that they came out with the plan the way they did. And obviously forbearance done properly could work and we think that the fundamental objective seems reasonable. We practice net neutrality. We already signed up for it once previously. Comcast already has a consent decree that requires it. So its not like we can't operate in that world and that we don't want to.¹¹

Google Fiber

"Asked whether the growing prospect of aggressive federal net neutrality rules has done anything to shift Google Fiber's investment plans — either in the short term or long term — the company told [the Washington Post], basically, no."

"The sort of open Internet rules that the [Federal Communications Commission] is currently discussing aren't an impediment to those plans,' Google said in a statement, 'and they didn't impact our decision to invest in Fiber.'"¹²

Sprint

"Sprint does not believe that a light touch application of Title II, including appropriate forbearance, would harm the continued investment in, and deployment of, mobile broadband services."¹³

10 Time Warner Cable Inc., UBS 42nd Annual Global Media and Communications Conference, Dec. 8, 2014. 11 Charter Communications, Inc., UBS 42nd Annual Global Media and Communications Conference, Dec. 8, 2014. 12 Brian Fung, "Google: Strong net neutrality rules won't hurt the future rollout of Google Fiber," Washington Post, Jan. 27, 2015. 13 Letter from Stephen Bye, Chief Technology Officer, Sprint, to FCC, GN Docket No. 14-28 (filed Jan. 15, 2015).

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“[Title II is] one of those topics that is highly charged, highly politicized and we took a step back and said it works in the interest of our customers, our consumers and the industry and we frankly found some of the arguments (of our competitors) to be less than compelling. . . . Our competitors are going to continue to invest so they are representing a situation that won’t play out.”

“In the terms of Title II with the appropriate forbearance we made the point that we really don’t see this as a negative for the industry at all.”¹⁴

¹⁴ Malathi Nayak, “Sprint says U.S. Telecoms will invest despite stronger net neutrality rules,” Reuters, Feb. 10, 2015.